

Express Mail No.: EL 477 035 130 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Tucker et al.

Application No.: 09/164,714

Group Art Unit: 1633

Filed: October 1, 1998

Examiner: M. Wilson

For: MORAXEIIA CATARRHALIS  
PROTEIN, GENE SEQUENCE AND  
USES THEREOF

Attorney Docket No.: 7969-074-999

**STATEMENT REGARDING PERMANENCE AND  
AVAILABILITY OF DEPOSITED MICROORGANISMS AND  
CORROBORATION REGARDING DESCRIBED MICROORGANISMS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

I, W. James Jackson, declare and state:

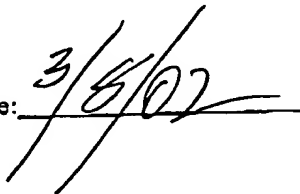
1. That I am presently an authorized Officer of Antex Biologics Inc.  
(Antex), the Assignee of the above identified application.
2. That on September 16, 1998, *E. coli* TOP10 F<sup>+</sup> containing plasmid pOMP21X was deposited with the AMERICAN TYPE TISSUE CULTURE COLLECTION (ATCC), at 10801 UNIVERSITY BLVD., MANASSAS, VIRGINIA 20110-2209, USA, International Depository Authority, in compliance with the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure, on behalf of Antex. The deposit was viable at the time of deposit and has been assigned accession number ATCC No. 98878. A copy of the Receipt in the case of our original deposit under the Budapest Treaty is attached as Exhibit A.
3. That I hereby assure the United States Patent and Trademark Office and the public that (a) all restrictions on the availability to the public of a sample of the deposited

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microorganism will be irrevocably removed upon issuance of a United States patent of which the microorganism are the subject; (b) the above-mentioned microorganism will be maintained for a period of at least five years after the most recent request for the furnishing of a sample of the deposited microorganism were received by the ATCC and, in any case for a period of at least 30 years after the date of deposit; (c) should the deposited microorganism become non-viable it will be replaced by the Assignee; and (d) access to the deposited microorganism will be available to the Commissioner during the pendency of the patent application or to one determined by the Commissioner to be entitled to such cell line under 37 C.F.R. § 1.14 and 35 U.S.C. § 122.

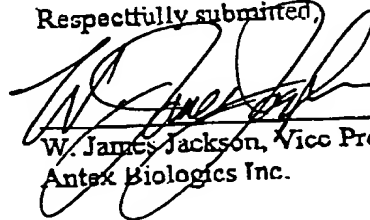
I hereby declare further that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true and further I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date:



By:

Respectfully submitted,

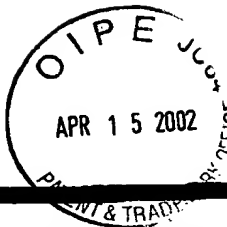


W. James Jackson, Vice President  
Antex Biologics Inc.

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# EXHIBIT A

# ATCC



10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-

## BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3  
AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Antex Biologics, Inc.  
Attn: Theresa M. Stevens  
300 Professional Drive  
Gaithersburg, MD 20740

RECEIVED

APR 22 2002

OFFICE OF PETITIONS

Deposited on Behalf of: Antex Biologics Inc.

Identification Reference by Depositor:

ATCC Designation

*Escherichia coli* TOP 10 F<sup>+</sup> containing plasmid pOMP21X

98878

The deposit was accompanied by:      a scientific description X a proposed taxonomic description indicated above.

The deposit was received September 16, 1998 by this International Depository Authority and has been accepted.

AT YOUR REQUEST: X We will inform you of requests for the strain for 30 years.

The strain will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strain, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strain.

If the culture should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace it with living culture of the same.

The strain will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the culture cited above was tested September 24, 1998. On that date, the culture was viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

*Barbara M. Halley*  
Barbara M. Halley, Administrator, Patent Depository

Date: September 24, 1998

cc: S. Leslie Misrock, Esq. (Ref. Docket 7969-074)

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